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**OFFICE OF PETITIONS**

In re Patent No. 7,113,939 :  
Chou et al. :  
Issue Date: September 26, 2006:  
Application No. 09/399,682 :  
Filed: September 21, 1999 :  
Atty Docket No. A8009 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR §1.705(d)" filed October 20, 2006. Patentees request that the patent term adjustment indicated in the patent be corrected from one hundred fifty-five (155) to two hundred seventy-five (275) days.

The request for reconsideration of the patent term adjustment indicated on the patent is GRANTED to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of two hundred ninety-seven (297) days. No new Issue Notification will be issued.

On September 26, 2006, the above-identified application matured into U.S. Patent No. 7,113,939. The instant request for reconsideration was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 155 days. Patentees state that the determination of patent term adjustment should not have been reduced by 120 days for the submission of a "Miscellaneous Incoming Paper" after the Notice of Allowance, as the only paper filed after the mailing of the Notice of Allowance was a

"Statement" which is being construed as a candor letter pursuant to MPEP 2733.

Patentees' argument is well-taken. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of a response to the examiner's reasons for allowance will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) *Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance*, 1247 OG 111 (June 26, 2001). A review of the application record reveals that the reduction of 120 days was based on the filing after allowance of a "Statement" filed May 8, 2006. Thus, it is concluded that the patent term adjustment should not have been reduced by 120 days.

Further review of the application history has been determined that the twenty-two (22) day reduction is incorrect. The Office mailed an Office action under section 132 on March 18, 2003. The record supports a conclusion that this was due to an error on the part of the Office in mailing the Office action to applicants. Accordingly, a letter restarting the period for reply (and re-mailing the notice) was mailed on April 10, 2003.

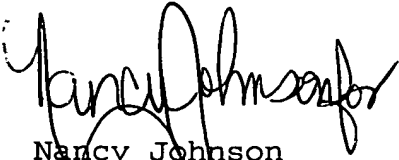
Thus, the Office's delay should be calculated using April 10, 2003. Applicants' response was received on July 10, 2003. Thus, no period of adjustment is required.

In view thereof, the patent term adjustment indicated in the patent should have been two hundred ninety-seven (297) days (326 - 29).

Receipt of the \$200.00 fee set forth in 37 CFR 1.18(e) is acknowledged. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. See 35 U.S.C. § 254 and 37 CFR § 1.322. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by two hundred ninety-seven (297) days.

Telephone inquiries specific to this matter should be directed to Charlema Grant, Petitions Attorney, at (571) 272-3215.

A handwritten signature in black ink, appearing to read 'Nancy Johnson', written in a cursive style.

Nancy Johnson  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,113,939 B2  
DATED : September 26, 2006  
INVENTOR(S) : Chou et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (155) days

Delete the phrase "by 155" and insert – by 297 days--